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ATTORNEY GENERAL

ORIGINAL



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DEPARTMENT OF JUSTICE

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ARIZONA CORPORATION COMMISSION  
DOCUMENT CONTROL

Arizona Corporation Commission  
**DOCKETED**

AUG 06 2003

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August 6, 2003

Via Facsimile and Overnight Delivery

Marc Spitzer, Chairman  
Arizona Corporation Commission  
Commissioner's Wing  
1200 West Washington Street  
Phoenix, AZ 85007-2929

**Rc: Palo Verde Utilities Company application for extension of existing  
Certificates of Convenience and Necessity for water and wastewater  
services, Docket No. WS-03575A-03-0167**

SW -  
**Santa Cruz Water Company application for extension of existing  
Certificates of Convenience and Necessity for water and wastewater  
services, Docket No. WS-03576A-03-0167**

Dear Chairman Spitzer:

I am following up on a request for information received from the staff of the Arizona Corporation Commission to provide information in relation to the applications to the Commission of Santa Cruz Water Company and Palo Verde Utilities Company. We were asked to provide information concerning a judgment obtained by the Oregon Public Employees' Retirement Fund (OPERF) and an order concerning the pledge of certain assets of Michael Reinbold, RHS Properties Inc. and Reinbold Investments, L.L.C. In addition, we ourselves have launched an investigation to determine whether OPERF's security interests in RHS Properties and Reinbold Investments are being protected.

**Background:** In 1999, in the matter Oregon Public Employees' Retirement Board v. Simat, Helliesen & Eichner et. al, Multnomah County Circuit Court, Oregon, Case No. 9610-08259, OPERF obtained a judgment against Michael Reinbold in the amount of \$61,701,719.00 arising from fraud and milking corporate assets. A certified copy of the Amended Money

Marc Spitzer, Chairman  
Arizona Corporation Commission  
August 6, 2003  
Page 2

Judgment is attached as Exhibit A. That judgment is now pending on appeal before the Oregon Court of Appeals.

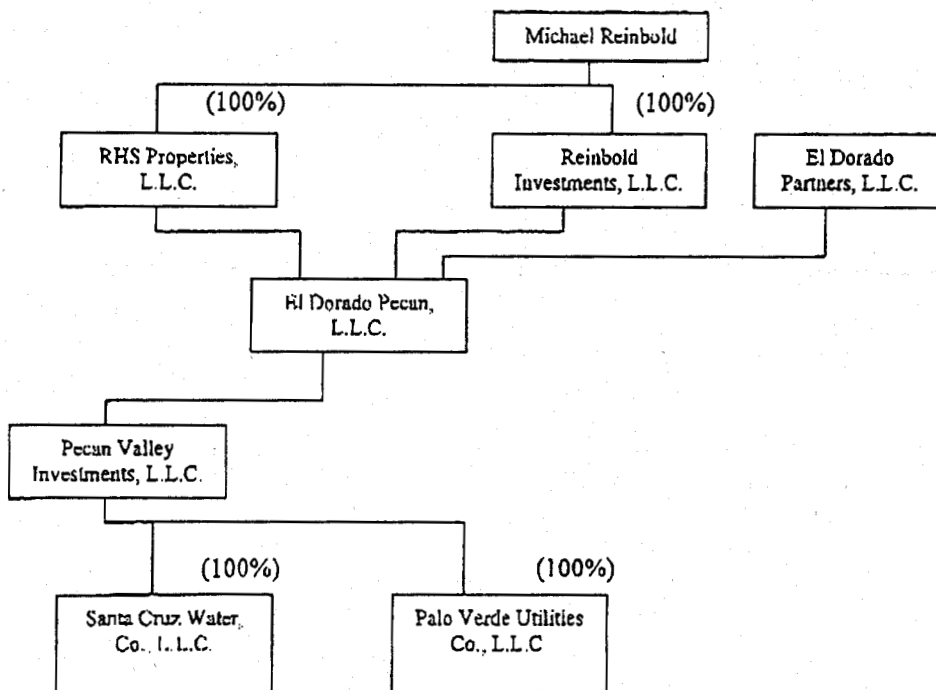
After judgment was entered, Mr. Reinbold applied to the Oregon Circuit Court for a stay pending appeal. Upon his application, the court entered an Order re: Undertaking on Appeal ("Order") that stayed execution and enforcement of the judgment. A certified copy of the Order is attached as Exhibit B. The court's Order required Mr. Reinbold to pledge his interest in Reinbold Investments and RHS Properties to OPERF as security for the judgment. (Order ¶¶1, 2.) Pursuant to the Order, Mr. Reinbold is expressly prohibited from diluting his interest in RHS Properties or Reinbold Investments except as provided for in the Order. (Order ¶3.) Further, if Mr. Reinbold uses the assets of RHS Properties or Reinbold Investments to acquire an interest in another business entity, Mr. Reinbold is required to notify OPERF and pledge the interest in the new entity to OPERF. (Order ¶4.) The Order limits the amount of money Mr. Reinbold can withdraw from RHS Properties and Reinbold Investments and prohibits him from disposing of any profits or income from his business interests. (Order ¶¶5, 6.) The Order also required Mr. Reinbold to sign a Pledge Agreement, which was executed by Mr. Reinbold on October 13, 2000. A copy of the executed Pledge Agreement is attached as Exhibit C.

**The Proposed Transfer of Ownership:** The companies Mr. Reinbold pledged to secure the OPERF judgment, Reinbold Investments and RHS Properties ("Pledged Companies"), had an ownership interest in Pecan Valley Investments, L.L.C. We do not currently know whether Mr. Reinbold or his Pledged Companies have or had control over Pecan Valley Investments and/or the decision to transfer ownership of Santa Cruz Water Co. and Palo Verde Utilities Co. ("Utility Companies") from Pecan Valley Investments to Phoenix Capital Partners, L.L.C., and Phoenix Utility Management, L.L.C. ("Transfer"). However, this Transfer is significant to OPERF because it appears to result in the transfer of assets from companies in which the Pledged Companies have an interest to companies in which the Pledged Companies have either no interest or a reduced interest and in which Mr. Reinbold, through Phoenix Utility Management, has a personal interest. In short, we have concerns over whether Mr. Reinbold and his Pledged Companies are moving assets out of the companies in which the Pledged Companies have an interest, and thereby potentially reducing the value of OPERF's security interest.

According to the Utility Companies' response to the Arizona Corporation Commission Staff Report for the Utility Companies' application for extension of their existing Certificates of Convenience and Necessity, prior to the Transfer, Pecan Valley Investments had a 100% ownership interest in the Utility Companies. Based on information set forth in the Staff Report, it appears that RHS Properties has an interest in Pecan Valley Investments through El Dorado Pecan, L.L.C. In addition, the Arizona Corporation Commission website lists Reinbold Investments and El Dorado Partners, L.L.C. as members of El Dorado Pecan. We believe the following chart demonstrates the pre-transfer ownership structure:

Marc Spitzer, Chairman  
 Arizona Corporation Commission  
 August 6, 2003  
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**Pre-Transfer Ownership Structure<sup>1</sup>**

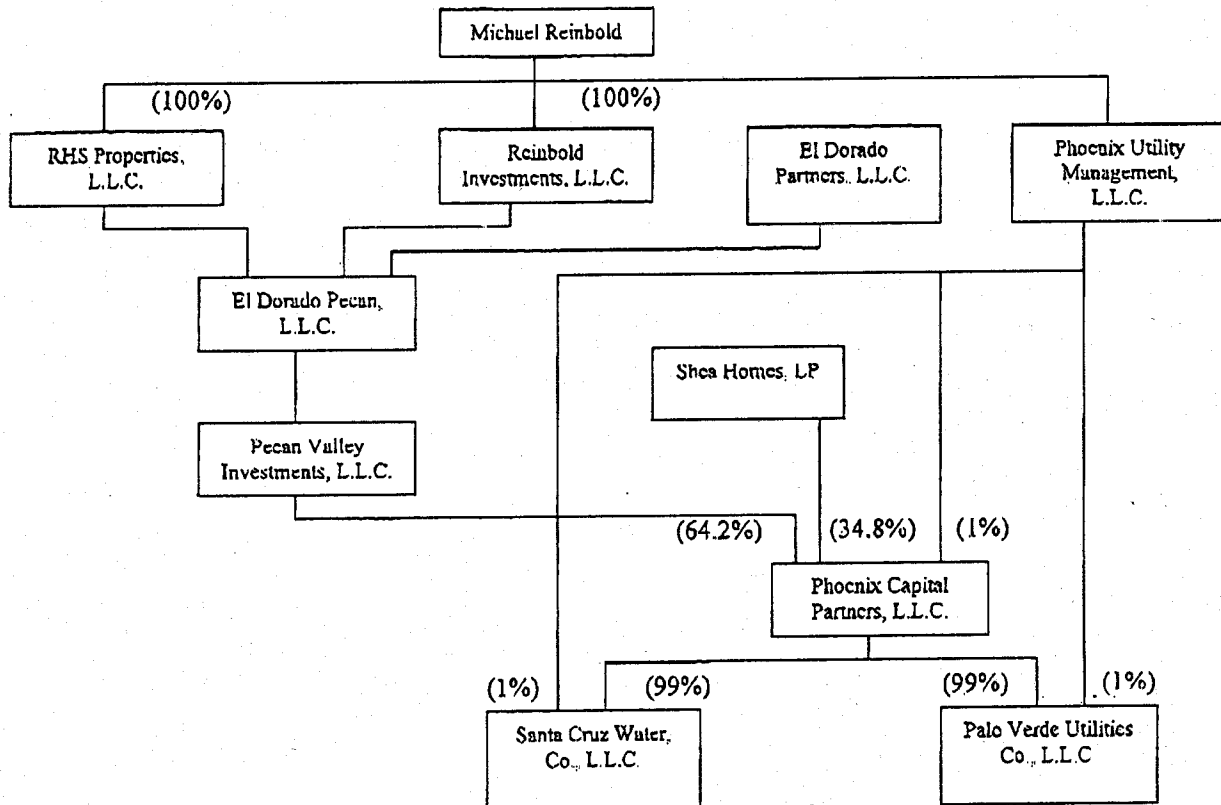


After the transfer, according to the Utility Companies' response to the Staff Report, Phoenix Capital Partners, L.L.C. will have a 99% ownership interest in the Utility Companies, and Phoenix Utility Management, L.L.C., will have a 1% ownership interest in the Utility Companies. Further, according to the Utility Companies' response, Phoenix Capital Partners is owned by Pecan Valley Investments (64.2%), Shea Homes, LP (34.8%), and Phoenix Utility Management (1%). Finally, according to the Arizona Corporation Commission records, Mr. Reinbold has a personal ownership interest in Phoenix Utility Management. In short, we believe the ownership structure after the Transfer will be the following:

<sup>1</sup> Other entities may be involved and have ownership interests that are not set forth in the Pre-Transfer and Post-Transfer Ownership Structure charts. Where we have been able to determine the percentage of ownership interest, that percentage will be noted in parentheses next to the line indicating an ownership interest.

Marc Spitzer, Chairman  
 Arizona Corporation Commission  
 August 6, 2003  
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### Post-Transfer Ownership Structure<sup>2</sup>



While Pecan Valley, and thus RHS Properties and Reinbold Investments, retains some interest in the Utility Companies through its interest in Phoenix Capital Partners, Pecan Valley's interest is reduced from 100% to 64.2% of Phoenix Capital Partners' 99% interest in the Utility Companies. The Transfer reduces the interest of Pecan Valley Investments in these valuable assets, and thus we are concerned that the Transfer may reduce the value of RHS Properties and Reinbold Investments in which OPERF holds its security interest.

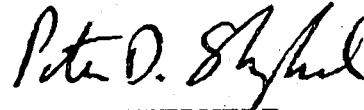
We are investigating, among other things, whether Mr. Reinbold and his Pledged Companies participated in effectuating the Transfer and whether the Transfer adversely affects OPERF's security interest. In addition, we are also investigating whether Mr. Reinbold may have used assets from the Pledged Companies to acquire his interest in Phoenix Utility Management (which was organized on August 13, 2002) and other corporations he has formed since the Order.

<sup>2</sup> See footnote 1.

Marc Spitzer, Chairman  
Arizona Corporation Commission  
August 6, 2003  
Page 5

We hope this information is of assistance to you. Please contact us if you need any further information.

Sincerely,



PETER D. SHEPHERD  
Deputy Attorney General

AGS12817

c: Commissioner Jim Irvin  
Commissioner William Mundell  
Commissioner Jeff Hatch-Miller  
Commissioner Mike Gleason  
Hearing Officer Dwight Nodes

5

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CIRCUIT COURT  
FOR MULTNOMAH COUNTY

IN THE CIRCUIT COURT OF OREGON  
FOR MULTNOMAH COUNTY

OREGON PUBLIC EMPLOYES'  
RETIREMENT BOARD, as trustee, on  
behalf of the OREGON PUBLIC  
EMPLOYES' RETIREMENT FUND,

Plaintiff,

v.

SIMAT, HELLIESEN & EICHNER, a  
Delaware corporation; PAMCORP  
HOLDINGS, INC., an Oregon corporation;  
PACIFIC AIRCRAFT MAINTENANCE  
CORPORATION (aka PAMCORP), an  
Oregon corporation; MICHAEL T.  
REINBOLD; DAVID J. SIMON; and  
KENNETH E. KELLEY;

Defendants.

SIMAT, HELLIESEN & EICHNER, a  
Delaware corporation,

Defendant/  
Third Party Plaintiff,

v.

OREGON INVESTMENT COUNCIL;  
OREGON DEPARTMENT OF  
TREASURY; and OREGON  
DEPARTMENT OF JUSTICE,

Third Party Defendants.

SIMAT, HELLIESEN & EICHNER, a  
Delaware corporation,

Plaintiff,

v.

THE PORT OF PORTLAND, a municipal  
corporation,

Defendant.

NO. 9610-08259

AMENDED MONEY JUDGMENT

Consolidated with  
Case No. 9802-01053

Certified a True Copy

Issued

Deputy  
Shirley



1 This action came before the Court for trial on December 7, 1998 before the  
2 undersigned judge.

3 Prior to trial, plaintiff Oregon Public Employees' Retirement Board, as trustee for the  
4 Oregon Public Employees' Retirement Fund ("PERF"), defendant Simat Helliesen & Eichner  
5 ("SH&E"), and third-party defendants Oregon Department of Treasury ("Treasury"), Oregon  
6 Department Of Justice ("Justice"), and Oregon Investment Council ("OIC"), and the Port of  
7 Portland ("Port") entered into a Settlement Agreement dated November 20, 1998.

8 Pursuant to that Settlement Agreement and prior to the entry of this judgment,  
9 plaintiff and SH&E have presented evidence to the Court as to the circumstances of the  
10 settlement. Based on the record and the evidence presented, the Court hereby FINDS that the  
11 settlement between plaintiff and SH&E is reasonable.

12 The Court hereby APPROVES the Settlement Agreement.

13 Pursuant to that Settlement Agreement, stipulated notices of dismissal were filed and  
14 judgments of dismissal were entered as follows:

15 1) Stipulated Notice of Dismissal Of Defendant Simat, Helliesen & Eichner and  
16 Judgment of Dismissal disposing of all claims made by and against plaintiff and SH&E;

17 2) Stipulated Notice of Dismissal of Third-Party Claims and Judgment of Dismissal  
18 disposing of all claims made by and against SH&E and third party defendants OIC, Treasury,  
19 and Justice;

20 3) Stipulated Notice of Dismissal by SH&E and the Port and Judgment entered in the  
21 consolidated case no. 9802-01053 and disposing of all claims made by and against SH&E  
22 and the Port.

23 Prior to trial, the Court entered orders of default against Kenneth E. Kelley  
24 ("Kelley"), Pacific Aircraft Maintenance Corporation ("Pamcorp") and Pamcorp Holdings,  
25 Inc. It appears from the record that:

26

1 (a) The claims against defendant Pamcorp arise upon contract. The claim against  
2 defendant Pamcorp Holdings, Inc. is to pierce the corporate veil to hold Pamcorp Holdings,  
3 Inc. liable for the obligations and debts of Pamcorp;

4 (b) The claim against defendant Kelley is to pierce the corporate veil to hold  
5 Kelley liable for the debts and obligations of Pamcorp and Pamcorp Holdings, Inc.;

6 (c) The amount sought is a sum certain or a sum which can by computation be  
7 made certain;

8 (d) Summons was properly served on Pamcorp Holdings, Inc. and Pamcorp  
9 pursuant to ORCP 7D and ORS Chapter 60, and Pamcorp Holdings, Inc. and Pamcorp failed  
10 to appear;

11 (e) Summons was properly served on Kelley pursuant to ORCP 7D, and Kelley  
12 failed to appear;

13 (f) Defendants Pamcorp Holdings, Inc., Pamcorp, and Kelley are not minors or  
14 persons incapacitated or financially incapable as defined by ORS 125.005, or military  
15 personnel;

16 (g) The Court has heard evidence and hereby determines that the amount due,  
17 including costs and disbursements to which plaintiff is entitled pursuant to ORCP 68B  
18 against Pamcorp, Pamcorp Holdings Inc., and Kelley, is \$34,518,000.

19 Prior to trial, the Court granted summary judgment in favor of defendants Reinbold  
20 and Simon on that portion of plaintiff's Second Claim for Relief, Count Two, for shareholder  
21 liability for the debts of Pamcorp and Pamcorp Holdings Inc. arising from  
22 undercapitalization.

23 Prior to trial, plaintiff PERF and the remaining defendants Reinbold and Simon  
24 waived their right to a jury trial and stipulated to a trial before this Court. Pursuant to that  
25 waiver, stipulation and the order of the Court, the action was tried to the undersigned judge  
26 beginning on December 7, 1998. Plaintiff PERF appeared by and through the Attorney



1 General for the State of Oregon and his Special Assistant Attorneys General David B.  
2 Markowitz and Lisa A. Kancr. Defendant Reinbold appeared personally and by and through  
3 his attorneys Jeanne M. Chamberlain and David S. Aman. Defendant Simon appeared  
4 personally and by and through his attorney Joseph C. Arellano. Opening statements were  
5 made on behalf of the respective parties, testimony and other evidence was introduced in  
6 support of their respective cases, and the parties rested. Arguments were made to the Court  
7 and having been duly advised on all matters of fact and law, the Court returned its decision  
8 on December 24, 1998, as follows:

9 On plaintiff's Second Claim for Relief, Count One, for shareholder liability for the  
10 debts of Pamcorp Holdings and Pamcorp against defendant Reinbold arising from milking  
11 corporate assets, the Court found in favor of plaintiff for damages in the amount of  
12 \$34,518,000.

13 On plaintiff's Second Claim for Relief, Count One, for shareholder liability for the  
14 debts of Pamcorp Holdings and Pamcorp against defendant Simon arising from milking  
15 corporate assets, the Court found in favor of defendant Simon.

16 On plaintiff's Second Claim for Relief, Count Two (in the alternative to Count One)  
17 for shareholder liability for the debt of Pamcorp Holdings and Pamcorp against defendant  
18 Reinbold arising from fraud, the Court found in favor of plaintiff for damages in the amount  
19 of \$34,518,000.

20 On plaintiff's Second Claim for Relief, Count Two (in the alternative to Court One)  
21 for shareholder liability for the debt of Pamcorp Holdings and Pamcorp against Simon  
22 arising from fraud, the Court found in favor of Simon and against plaintiff.

23 On plaintiff's claims arising from fraud, the Court found that plaintiff established  
24 actual reliance, that plaintiff's reliance was foolish, that it was unreasonable and unjustified,  
25 that reliance is an element of fraud, but that reasonable reliance is not an element of fraud,  
26 and therefore, on plaintiff's Third Claim for Relief for fraud against defendants Simon and

Reinbold, the Court found in favor of plaintiff for damages in the amount of \$61,701,719. Plaintiff's damages for fraud on plaintiff's Third Claim for Relief are inclusive of plaintiff's damages for piercing the corporate veil on plaintiff's Second Claim for Relief.

The matter now coming on for judgment, it is hereby ADJUDGED:

1. Plaintiff has judgment against defendant Pamcorp on plaintiff's *First Claim for Relief of the Fifth Amended Complaint* (as originally pled in the *Sixth Claim for Relief of plaintiff's Complaint*) for breach of contract in the amount of \$34,518,000, inclusive of prejudgment interest;

2. Plaintiff has judgment against defendants Kelley and Pamcorp Holdings Inc. on plaintiff's *Seventh Claim for Relief of plaintiff's Complaint* for piercing the corporate veil for shareholder liability for the debts of Pamcorp Holdings and Pamcorp in the amount of \$34,518,000, inclusive of prejudgment interest;

3. Plaintiff has judgment against defendant Reinbold on plaintiff's *Second Claim for Relief, Count One, of the Fifth Amended Complaint*, for shareholder liability for the debts of Pamcorp Holdings and Pamcorp arising from milking corporate assets in the amount of \$34,518,000, inclusive of prejudgment interest;

4. Defendant Simon has judgment against plaintiff on plaintiff's *Second Claim for Relief, Count One, of the Fifth Amended Complaint*, for shareholder liability for the debts of Pamcorp Holdings and Pamcorp arising from milking corporate assets.

5. Plaintiff has judgment against defendant Reinbold on plaintiff's *Second Claim for Relief, Count Two, of the Fifth Amended Complaint*, for shareholder liability for the debts of Pamcorp Holdings and Pamcorp arising from fraud in the amount of \$34,518,000, inclusive of prejudgment interest;

6. Defendant Simon has judgment against plaintiff on plaintiff's *Second Claim for Relief, Count Two, of the Fifth Amended Complaint*, for shareholder liability for the debts of Pamcorp Holdings and Pamcorp arising from fraud.

1 7. Defendants Reinbold and Simon have judgment against plaintiff on plaintiff's  
2 *Second Claim for Relief, Count Two, of the Fifth Amended Complaint*, for shareholder  
3 liability for the debts of Pamcorp Holdings and Pamcorp arising from undercapitalization; \_\_\_\_\_

4 8. Plaintiff has judgment against defendants Reinbold and Simon on plaintiff's *Third*  
5 *Claim for Relief of the Fifth Amended Complaint* for fraud in the amount of \$61,701,719,  
6 inclusive of prejudgment interest. Plaintiff's damages for fraud on plaintiff's Third Claim for  
7 Relief are inclusive of plaintiff's damages for piercing the corporate veil on plaintiff's  
8 Second Claim for Relief;

9 9. Defendants Reinbold and Simon have judgment against plaintiff on plaintiff's  
10 *Fourth Claim for Relief of the Fifth Amended Complaint* for attorney fees;

11 10. Plaintiff has judgment against defendants Reinbold and Simon on *Reinbold's and*  
12 *Simon's counterclaims for attorney fees*;

13 11. All claims between plaintiff and SH&E and all claims between SH&E and third  
14 party defendants OIC, Treasury, and Justice are dismissed with prejudice and without an  
15 award of costs or attorney fees on any of the dismissed claims; and therefore,

16 That judgment be entered in favor of plaintiff and against defendants Pamcorp,  
17 Pamcorp Holdings, Inc. and Kelley for \$34,518,000 inclusive of prejudgment interest; and

18 That judgment be entered in favor of plaintiff and against defendants Reinbold and  
19 Simon for \$61,701,719, inclusive of prejudgment interest, as further detailed below:

20 **MONEY JUDGMENT**

21 1. Judgment Creditor: Public Employees' Retirement Board as trustee for the  
22 Public Employees' Retirement Fund;

23 2. Judgment Creditor's Attorney: Attorney General for the State of Oregon;

24 ///

25 ///

26 ///

3. Judgment Debtor: Pamcorp Holding, Inc.;  
Pacific Aircraft Maintenance Corporation (aka  
Pamcorp); Michael T. Reinbold;  
Kenneth E. Kelley; and  
David J. Simon.

4. Amount of Judgment:  
\$34,518,000 as against defendants Kenneth E. Kelley, Pamcorp Holdings, Inc.  
and Pacific Aircraft Maintenance Corporation (aka Pamcorp);  
\$61,701,719 as against defendants Reinbold and Simon, jointly and severally.

5. Interest Owed to Date of Judgment:  
The above-described judgment includes prejudgment interest in the amount of  
\$3,572,000 as against defendants Kenneth E. Kelley, Pamcorp Holdings, Inc. and Pacific  
Aircraft Maintenance Corporation (aka Pamcorp);

The above-described judgment includes prejudgment interest in the amount of  
\$4,698,000 as against defendants Reinbold and Simon, jointly and severally.

6. Post-Judgment Interest: Interest accrues at the rate of 9% per year on the  
balance of \$30,946,000 in the amount of \$7,630.52 per day against Kenneth E. Kelley,  
Pamcorp Holdings Inc. and Pamcorp from June 21, 1999, the date of entry of the original  
judgment, until paid in full. Interest is simple interest.

Interest accrues at the rate of 9% per year on the balance of \$57,003,719 in the  
amount of \$14,055.71 per day against Reinbold and Simon from June 21, 1999, the date of  
entry of the original judgment, until paid in full. Interest is simple interest.

7. Costs and Disbursements: The money judgment also includes an award of

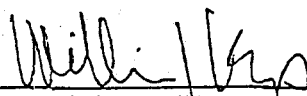
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costs and disbursements. The amount of these items will be determined later pursuant to  
ORCP 68C.

DATED this 17 day of Nov, 1999.

  
\_\_\_\_\_  
Hon. William J. Keys  
Circuit Court Judge

*cm*

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CIRCUIT COURT  
FOR MULTNOMAH COUNTY

IN THE CIRCUIT COURT OF OREGON  
FOR MULTNOMAH COUNTY

OREGON PUBLIC EMPLOYES'  
RETIREMENT BOARD, as trustee, on  
behalf of the OREGON PUBLIC  
EMPLOYES' RETIREMENT FUND,

Plaintiff,

v.

SIMAT, HELLIESEN & EICHNER, a  
Delaware corporation; PAMCORP  
HOLDINGS, INC., an Oregon corporation;  
PACIFIC AIRCRAFT MAINTENANCE  
CORPORATION (aka PAMCORP), an  
Oregon corporation; MICHAEL T.  
REINBOLD; DAVID J. SIMON; and  
KENNETH E. KELLEY;

Defendants.

SIMAT, HELLIESEN & EICHNER, a  
Delaware corporation,

Defendant/  
Third Party Plaintiff,

v.

OREGON INVESTMENT COUNCIL;  
OREGON DEPARTMENT OF  
TREASURY; and OREGON  
DEPARTMENT OF JUSTICE,

Third Party Defendants.

SIMAT, HELLIESEN & EICHNER, a  
Delaware corporation,

Plaintiff,

v.

THE PORT OF PORTLAND, a municipal  
corporation,

Defendant.

NO. 9610-08259

ORDER RE: UNDERTAKING ON  
APPEAL

ENTERED  
APR 21 2000  
IN REGISTER BY SL

Consolidated with  
Case No. 9802-01053

Certified a True Copy



1 Defendant Michael T. Reinbold moved the Court for an order setting the undertaking on  
2 appeal at \$1,000 and staying enforcement of the judgment pending appeal. Plaintiff opposed the  
3 motion. The Court ordered Mr. Reinbold to produce, for attorneys eyes only, sworn financial  
4 statements.

5 Based on the record, and pursuant to ORS 19.130,

6 IT IS HEREBY ORDERED that execution and enforcement of the Amended Money  
7 Judgment entered on November 18, 1999 shall be stayed as to defendant Michael T. Reinbold  
8 until such time as the appellate judgment is issued and all appeals are completed, conditioned on  
9 the following:

10 1. Defendant Reinbold shall pledge his interest in Reinbold Investments, L.L.C.  
11 ("Reinbold Investments") as security for the Amended Money Judgment pursuant to the Pledge  
12 Agreement attached as Exhibit 1;

13 2. Defendant Reinbold shall pledge his stock in RHS Properties, Inc ("RHS") as  
14 security for the Amended Money Judgment pursuant to the Pledge Agreement attached as  
15 Exhibit 1;

16 3. Absent written consent of Plaintiff, Defendant Reinbold shall not dilute his  
17 interest in Reinbold Investments and/or RHS, except as provided herein;

18 4. If Defendant Reinbold uses the assets of RHS and/or Reinbold Investments to  
19 acquire an ownership interest in, or form any other companies, corporations, subsidiaries,  
20 partnerships, joint ventures or other business entities, Defendant shall inform Plaintiff and pledge  
21 the stock or other interest in such new entity in the manner described in the Pledge Agreement  
22 attached as Exhibit 1.

23 5. From the date of entry of this Order until such time as the appellate judgment is  
24 issued, Reinbold shall withdraw no more than the following specific sums from RHS and  
25 Reinbold Investments:  
26

1 a. Annual compensation in the form of salary, dividend distributions or  
2 otherwise in the amount of \$200,000. For purposes of calculating compensation,  
3 ordinary business expenses paid for by RHS or Reinbold Investments shall not be  
4 considered imputed income to Reinbold;

5 b. \$21,000 in the year 2002 for the sole purpose of paying attorney fees and  
6 costs associated with the litigation in this matter and \$35,000 annually thereafter for the  
7 sole purpose of paying attorneys fees and costs associated with the litigation in this  
8 matter beginning as of January 2003;

9 c. Sums needed for payment of income taxes related to profits and earnings  
10 in excess of \$200,000 per year. If sums in excess of the \$200,000 are used to pay taxes  
11 on profits and earnings for RHS, then the security interest of Tonkon Torp LLP in RHS  
12 shall be reduced in relationship to Plaintiff's security interest in RHS by those amounts  
13 used to pay taxes;

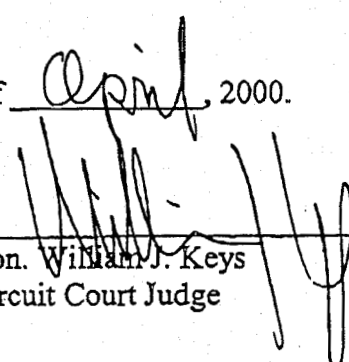
14 d. Funds needed for medical emergencies;

15 e. Additional sums, if any, pursuant to prior written consent of the Plaintiff  
16 or as allowed by the Court upon application for modification of this Order upon good  
17 cause shown;

18 6. Except as specified in paragraph 5 above, Defendant Reinbold shall not dispose of  
19 any profits or income from his business interests, absent prior written consent of the Plaintiff or  
20 order of this Court upon good cause shown.

21 IT IS SO ORDERED.

22 DATED this 13 day of April, 2000.

23  
24   
25 Hon. William J. Keys  
26 Circuit Court Judge



**PLEDGE AGREEMENT**

DATE: \_\_\_\_\_, 2000

BETWEEN: Michael T. Reinbold ("Pledgor")

AND: Oregon Public Employees' Retirement Board, as trustee, on behalf of the  
Oregon Public Employees' Retirement Fund ("Secured Party")

**RECITAL**

Pledgor is a Judgment Debtor on the Amended Money Judgment entered in the matter of Oregon Public Employees' Retirement Board, as trustee, on behalf of the Oregon Public Employees' Retirement Fund v. Simat, Helliesen & Eichner, et. al. No. 9610-08259 ("litigation") on November 18, 1999. Pursuant to the Court's Order re Undertaking on Appeal, Pledgor shall pledge certain business interests until such time as the appellate judgment is issued and all appeals are completed and, in the event Plaintiff prevails on appeal, until such time as the Amended Money Judgment as to Pledgor Reinbold is satisfied. NOW THEREFORE, the parties agree as follows:

**AGREEMENT****1. Grant of Security Interest.**

(a) Subject to the prior pledge to Tonkon Torp LLP, Pledgor grants to Secured Party a security interest in 1,000 shares of the common stock of RHS Properties, Inc. ("RHS") and all proceeds thereof.

(b) Pledgor grants to Secured Party a security interest in his membership interest in Reinbold Investments, LLC ("Reinbold Investments") and all proceeds thereof.

(c) In the event Pledgor uses the assets of RHS and/or Reinbold Investments to acquire an ownership interest in, or to form, any other companies, corporations, partnerships, joint ventures or other business entities, Pledgor will inform Secured Party and pledge the stock or other interest in such new entity in the manner described in this Agreement.

**2. Obligation.** This Pledge Agreement secures the obligations of Pledgor described in the certain Amended Money Judgment entered in the litigation on November 18, 1999.

**3. Possession of Stock Certificate.** Stock Certificate No. 1, evidencing all of Reinbold's shares of RHS, is in the possession of Tonkon Torp LLP.

**4. Representations and Warranties of Pledgor.** Pledgor represents and warrants to Secured Party that:

(a) Stock Ownership. Pledgor is the owner of the shares of RHS free and clear of liens, encumbrances, or other matters that might affect title to the shares with the exception of a Pledge and Security Agreement between Pledgor and Tonkon Torp LLP dated November 17, 1998.

Pledgor is the owner of a 100 percent interest in Reinbold Investments free and clear of all liens, encumbrances or other matters that might affect title.

(b) Capitalization. The authorized capital stock of RHS consists of 2 million shares of capital stock, having a par value of \$1 per share, of which 1,000 shares are outstanding, validly issued, fully paid, and nonassessable, all of which are owned by Pledgor.

(c) Capacity to Transfer Shares. Pledgor has previously pledged his shares in RHS to Tonkon Torp LLP.

5. Covenants of Pledgor. Pledgor agrees that with the exception of the pledge of RHS to Tonkon Torp LLP, he shall not allow or grant any other lien or security interest in RHS or Reinbold Investments without the prior written consent of the Secured Party.

6. Covenants of Pledgor with Respect to Business Interests. From the date of entry of the Court's Order re Undertaking on Appeal until such time as the appellate judgment is issued and all appeals are completed, or should plaintiff prevail on appeal, until such time as the Amended Money Judgment as to Defendant Reinbold is satisfied, absent prior written consent of Secured Party, Pledgor agrees not to cause RHS or Reinbold Investments to:

(a) Amend their respective Articles of Organization, Articles of Incorporation or Bylaws, or adopt a plan of liquidation or dissolution;

(b) Issue additional stock in RHS, or dilute his ownership interest in RHS and/or Reinbold Investments in any manner;

(c) Distribute to Reinbold more than the following specified sums collectively:

(1) Annual compensation in the form of salary, dividend distributions or other form of remuneration in a collective amount greater than \$200,000. For purposes of calculating compensation, ordinary business expenses paid for by RHS or Reinbold Investments shall not be considered imputed income to Reinbold;

(2) An additional \$21,000 in the year 2002 for the sole purpose of paying attorney fees and costs associated with the litigation in this matter and \$35,000 annually thereafter for the sole purpose of paying attorneys fees and costs associated with the litigation in this matter, including appeals, beginning as of January 2003;

(3) Sums needed for payment of income taxes related to any profits and earnings of RHS and Reinbold Investments in excess of \$200,000 per year.

(4) Funds needed for medical emergencies;

(5) Additional sums, if any, allowed by the Court upon application for modification of the Order re Undertaking On Appeal upon good cause shown.

(d) Create, incur, assume, or suffer to exist any obligation for borrowed money other than accounts payable and liabilities incurred in the ordinary course of RHS' or Reinbold Investments' business from the date of this Agreement;

7. Voting Shares; Transfer of Interest.

(a) As long as no Event of Default occurs, Pledgor shall be entitled to vote the shares of RHS.

(b) As long as the obligations secured by this Agreement remain outstanding, Pledgor will not transfer, whether by sale, gift or otherwise, any ownership interest in RHS and/or Reinbold Investments without Secured Party's prior written approval. Secured Party expressly acknowledges that Pledgor has entered into a prior pledge of the stock of RHS to Tonkon Torp LLP.

8. Events of Default. A breach of or failure to perform any of the terms of this Agreement which has not been cured within 10 business days after written notice has been given of such breach or failure, including, without limitation, the representations and warranties contained in Section 4 and the covenants contained in Sections 5 and 6 of this Agreement shall constitute an Event of Default. Written notice of default shall be sent both by certified mail and regular mail and shall be deemed effective upon mailing.

9. Remedies upon Default. Upon the occurrence of any Event of Default, Secured Party may, in Secured Party's sole discretion and with or without further notice to Pledgor and in addition to all rights and remedies at law or in equity or otherwise:

(a) Subject to the interests of Tonkon Torp LLP, exercise Secured Party's proxy rights with respect to all or a portion of the RHS shares. Pledgor agrees to deliver promptly to Tonkon Torp LLP, to be held in trust for Secured Pledgor, the proxy in the form requested by Secured Party.

(b) Sell or otherwise dispose of the Shares in accordance with Section 10 below.

(c) Sell or dispose of Reinbold Investments.

10. Sale upon Default. Pledgor and Secured Party acknowledge and agree that the shares are restricted, unregistered stock and that both the RHS shares and the interest in Reinbold Investments are difficult to value and that no public market exists for the sale of such shares or interest. The parties further agree that the RHS shares are not subject to sale in a "recognized market" as that term is described in ORS 79.5040. Pledgor and Secured Party wish to agree to

reasonable standards for conducting a commercially reasonable sale of the shares and the interest in Reinbold Investments without limiting rights and remedies otherwise available to Pledgor. The parties agree that compliance with the following steps shall satisfy requirements of a commercially reasonable sale:

(a) The sale may be either a public or a private sale, at Secured Party's discretion, and it may be for all or any portion of the RHS shares and/or the interests in Reinbold Investments.

(b) Secured Party shall set a date for public sale of the shares or interest, or a date after which a private sale may occur, which date shall be not less than 30 days after the date notice of the sale is given to Pledgor, and shall send written notification to Pledgor in advance regarding the date and the time of the public sale, or the date after which a private sale may occur. In the event Secured Party elects to conduct a private sale, Secured Party shall give 10 days prior written notice sent certified and first class mail to Pledgor indicating the price at which Secured Party intends to sell at such private sale. Secured Party shall not sell at a price below the price contained in the written notice to Pledgor.

(c) Within a reasonable time upon request, Pledgor shall provide Secured Party with information requested by Secured Party for compliance with state or federal securities laws.

(d) At any sale of any of the shares or interest, Secured Party may restrict the prospective bidders or purchasers to persons or entities who, by certain representations made by them, would render registration of the sale under state or federal securities laws unnecessary.

11. **Default Pending Appeal.** Should an Event of Default occur leading to a sale of shares or interest pursuant to section 10 above, all proceeds from such sale shall be segregated and deposited into an interest bearing account. Should Secured Party ultimately prevail on appeal, the Secured Party shall be entitled to receive all such sale proceeds and interest and such shall be applied against amounts owing under the Amended Money Judgment. Should Pledgor ultimately prevail on appeal, Pledgor shall be entitled to receive all such sale proceeds and interest.

12. **Unsuccessful Appeal.** In the event Secured Party ultimately prevails on appeal, and at such time as the appellate mandate issues in favor of Secured Party and all appeals are completed, Secured Party shall be entitled immediately to exercise all rights and interests created under sections 9, 10, and 11 of this Pledge Agreement including but not limited to the "Remedies upon Default" regardless of whether a default has or has not occurred.

13. **Miscellaneous.**

**Governing Law.** Oregon law shall apply to the interpretation and enforcement of this Pledge Agreement.

**Notice.** All notices to be given under this agreement to Pledgor shall be provided to:

Mr. Michael T. Reinbold  
4641 East Caron Street  
Phoenix, AZ 85028

With a copy to: Mr. David S. Aman  
Ms. Jeanne M. Chamberlain  
Tonkon Torp LLP  
Suite 1600  
888 SW Fifth Avenue  
Portland, OR 97204

All notices required to be given under this agreement to Secured Party shall be provided to:

Oregon Public Employees' Retirement Fund  
Oregon State Treasury  
Attn: W. Dan Smith, Director  
Investment Division  
350 Winter Street, N.E. #100  
Salem, OR 97310-0840

With copies to:

Attorney General State of Oregon  
Attn: Peter Shepherd  
Oregon Department of Justice  
100 Justice Building  
1162 Court Street NE  
Salem, OR 97310

Markowitz, Herbold, Glade & Mehlhaf, P.C.  
Attn: Lisa A. Kaner  
Suite 3000  
1211 SW Fifth Avenue  
Portland, OR 97204-3730

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Michael T. Reinbold  
Pledgor

Oregon Public Employees' Retirement Board as trustee on behalf of  
the Oregon Public Employees' Retirement Fund:

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OCT-16-2000 11:36

TOKKON TORP LLP #2

P.03/08

## PLEDGE AGREEMENT

DATE: December 13, 2000

BETWEEN: Michael T. Reinbold

("Pledgor")

AND: Oregon Public Employees' Retirement Board, as trustee, on behalf of the  
Oregon Public Employees' Retirement Fund ("Secured Party")

### RECITAL

Pledgor is a Judgment Debtor on the Amended Money Judgment entered in the matter of Oregon Public Employees' Retirement Board, as trustee, on behalf of the Oregon Public Employees' Retirement Fund v. Smart, Helliesen & Eichner, et al. No. 9610-08259 ("litigation") on November 18, 1999. Pursuant to the Court's Order re Undertaking on Appeal, Pledgor shall pledge certain business interests until such time as the appellate judgment is issued and all appeals are completed and, in the event Plaintiff prevails on appeal, until such time as the Amended Money Judgment as to Pledgor Reinbold is satisfied. NOW THEREFORE, the parties agree as follows:

### AGREEMENT

#### 1. Grant of Security Interest

(a) Subject to the prior pledge to Tonkon Torp LLP, Pledgor grants to Secured Party a security interest in 1,000 shares of the common stock of RHS Properties, Inc. ("RHS") and all proceeds thereof.

(b) Pledgor grants to Secured Party a security interest in his membership interest in Reinbold Investments, LLC ("Reinbold Investments") and all proceeds thereof.

(c) In the event Pledgor uses the assets of RHS and/or Reinbold Investments to acquire an ownership interest in, or to form, any other companies, corporations, partnerships, joint ventures or other business entities, Pledgor will inform Secured Party and pledge the stock or other interest in such new entity in the manner described in this Agreement.

2. **Obligation.** This Pledge Agreement secures the obligations of Pledgor described in the certain Amended Money Judgment entered in the litigation on November 18, 1999.

3. **Possession of Stock Certificate.** Stock Certificate No. 1, evidencing all of Reinbold's shares of RHS, is in the possession of Tonkon Torp LLP.

4. **Representations and Warranties of Pledgor.** Pledgor represents and warrants to Secured Party that

EXHIBIT C  
PAGE 1

(a) Stock Ownership. Pledgor is the owner of the shares of RHS free and clear of liens, encumbrances, or other matters that might affect title to the shares with the exception of a Pledge and Security Agreement between Pledgor and Tonkon Torp LLP dated November 17, 1998.

Pledgor is the owner of a 100 percent interest in Reinbold Investments free and clear of all liens, encumbrances or other matters that might affect title.

(b) Capitalization. The authorized capital stock of RHS consists of 2 million shares of capital stock, having a par value of \$1 per share, of which 1,000 shares are outstanding, validly issued, fully paid, and nonassessable, all of which are owned by Pledgor.

(c) Capacity to Transfer Shares. Pledgor has previously pledged his shares in RHS to Tonkon Torp LLP.

5. Covenants of Pledgor. Pledgor agrees that with the exception of the pledge of RHS to Tonkon Torp LLP, he shall not allow or grant any other lien or security interest in RHS or Reinbold Investments without the prior written consent of the Secured Party.

6. Covenants of Pledgor with Respect to Business Interests. From the date of entry of the Court's Order re Undertaking on Appeal until such time as the appellate judgment is issued and all appeals are completed, or should plaintiff prevail on appeal, until such time as the Amended Money Judgment as to Defendant Reinbold is satisfied, absent prior written consent of Secured Party, Pledgor agrees not to cause RHS or Reinbold Investments to:

(a) Amend their respective Articles of Organization, Articles of Incorporation or Bylaws, or adopt a plan of liquidation or dissolution;

(b) Issue additional stock in RHS, or dilute his ownership interest in RHS and/or Reinbold Investments in any manner;

(c) Distribute to Reinbold more than the following specified sums collectively:

(1) Annual compensation in the form of salary, dividend distributions or other form of remuneration in a collective amount greater than \$200,000. For purposes of calculating compensation, ordinary business expenses paid for by RHS or Reinbold Investments shall not be considered imputed income to Reinbold;

(2) An additional \$21,000 in the year 2002 for the sole purpose of paying attorney fees and costs associated with the litigation in this matter and \$35,000 annually thereafter for the sole purpose of paying attorneys fees and costs associated with the litigation in this matter, including appeals, beginning as of January 2003;

(3) Sums needed for payment of income taxes related to any profits and earnings of RHS and Reinbold Investments in excess of \$200,000 per year.



(4) Funds needed for medical emergencies;

(5) Additional sums, if any, allowed by the Court upon application for modification of the Order re Undertaking On Appeal upon good cause shown.

(d) Create, incur, assume, or suffer to exist any obligation for borrowed money other than accounts payable and liabilities incurred in the ordinary course of RRS or Reinhold Investments' business from the date of this Agreement;

7. Voting Shares; Transfer of Interest

(a) As long as no Event of Default occurs, Pledgor shall be entitled to vote the shares of RRS.

(b) As long as the obligations secured by this Agreement remain outstanding, Pledgor will not transfer, whether by sale, gift or otherwise, any ownership interest in RRS and/or Reinhold Investments without Secured Party's prior written approval. Secured Party expressly acknowledges that Pledgor has entered into a prior pledge of the stock of RRS to Tonkon Torp LLP.

8. Events of Default A breach of or failure to perform any of the terms of this Agreement which has not been cured within 10 business days after written notice has been given of such breach or failure, including without limitation, the representations and warranties contained in Section 4 and the covenants contained in Sections 5 and 6 of this Agreement shall constitute an Event of Default. Written notice of default shall be sent both by certified mail and regular mail and shall be deemed effective upon mailing.

9. Remedies upon Default Upon the occurrence of any Event of Default, Secured Party may, in Secured Party's sole discretion and with or without further notice to Pledgor and in addition to all rights and remedies at law or in equity or otherwise:

(a) Subject to the interests of Tonkon Torp LLP, exercise Secured Party's proxy rights with respect to all or a portion of the RRS shares. Pledgor agrees to deliver promptly to Tonkon Torp LLP, to be held in trust for Secured Pledgor, the proxy in the form requested by Secured Party.

(b) Sell or otherwise dispose of the Shares in accordance with Section 10 below.

(c) Sell or dispose of Reinhold Investments.

10. Sale upon Default Pledgor and Secured Party acknowledge and agree that the shares are restricted, unregistered stock and that both the RRS shares and the interest in Reinhold Investments are difficult to value and that no public market exists for the sale of such shares or interest. The parties further agree that the RRS shares are not subject to sale in a "recognized market" as that term is described in ORS 79.5040. Pledgor and Secured Party wish to agree to



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P.06/08

reasonable standards for conducting a commercially reasonable sale of the shares and the interest in Reinbold Investments without limiting rights and remedies otherwise available to Pledgor. The parties agree that compliance with the following steps shall satisfy requirements of a commercially reasonable sale:

(a) The sale may be either a public or a private sale, at Secured Party's discretion, and it may be for all or any portion of the RHS shares and/or the interests in Reinbold Investments.

(b) Secured Party shall set a date for public sale of the shares or interest, or a date after which a private sale may occur, which date shall be not less than 30 days after the date notice of the sale is given to Pledgor, and shall send written notification to Pledgor in advance regarding the date and the time of the public sale, or the date after which a private sale may occur. In the event Secured Party elects to conduct a private sale, Secured Party shall give 10 days prior written notice sent certified and first class mail to Pledgor indicating the price at which Secured Party intends to sell at such private sale. Secured Party shall not sell at a price below the price contained in the written notice to Pledgor.

(c) Within a reasonable time upon request, Pledgor shall provide Secured Party with information requested by Secured Party for compliance with state or federal securities laws.

(d) At any sale of any of the shares or interest, Secured Party may restrict the prospective bidders or purchasers to persons or entities who, by certain representations made by them, would render registration of the sale under state or federal securities laws unnecessary.

11. Default Pending Appeal. Should an Event of Default occur leading to a sale of shares or interest pursuant to section 10 above, all proceeds from such sale shall be segregated and deposited into an interest-bearing account. Should Secured Party ultimately prevail on appeal, the Secured Party shall be entitled to receive all such sale proceeds and interest and such shall be applied against amounts owing under the Antecedent Money Judgment. Should Pledgor ultimately prevail on appeal, Pledgor shall be entitled to receive all such sale proceeds and interest.

12. Unsuccessful Appeal. In the event Secured Party ultimately prevails on appeal, and at such time as the appellate mandate issues in favor of Secured Party and all appeals are completed, Secured Party shall be entitled immediately to exercise all rights and interests created under sections 9, 10, and 11 of this Pledge Agreement including but not limited to the "Remedies upon Default" regardless of whether a default has or has not occurred.

13. Miscellaneous.

Governing Law. Oregon law shall apply to the interpretation and enforcement of this Pledge Agreement.

Notice. All notices to be given under this agreement to Pledgor shall be provided in:

EXHIBIT C  
 PAGE 4

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TOKKON TORP LLP #2

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Mr. Michael T. Reinbold  
4641 East Canon Street  
Phoenix, AZ 85028

With a copy to:

Mr. David S. Arizon  
Ms. Jeanne M. Chamberlain  
Tonkon Torp LLP  
Suite 1600  
888 SW Fifth Avenue  
Portland, OR 97204

All notices required to be given under this agreement to Secured Party shall be provided

Oregon Public Employees' Retirement Fund  
Oregon State Treasury  
Attn: W. Dan Smith, Director  
Investment Division  
350 Winter Street, N.E. #100  
Salem, OR 97310-0840

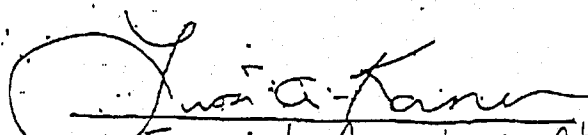
With copies to:

Attorney General State of Oregon  
Attn: Peter Shepherd  
Oregon Department of Justice  
100 Justice Building  
1162 Court Street NE  
Salem, OR 97310

Markowitz, Herbold, Glade & Mehlhaf, P.C.  
Attn: Lisa A. Kanter  
Suite 3000  
1211 SW Fifth Avenue  
Portland, OR 97204-3730

  
Michael T. Reinbold  
Pledgor

Oregon Public Employees' Retirement Board as trustee on behalf of  
the Oregon Public Employees' Retirement Fund:

  
Lisa A. Kanter  
Special Assistant Attorney General  
on behalf of OPERF